



Children, Families, Health and Human Services Interim Committee

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56th Montana Legislature

SENATE MEMBERS

MIGNON WATERMAN, PRESIDING OFFICER
DALE E. BERRY
EVE FRANKLIN
BOB KEENAN

HOUSE MEMBERS

LOREN L. SOFT, VICE PRESIDING OFFICER
BOB LAWSON
TRUDI SCHMIDT
CAROLYN SQUIRES

COMMITTEE STAFF

SUSAN BYORTH FOX
RESEARCH ANALYST
DAVID NISS
STAFF ATTORNEY
LOIS O'CONNOR
SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Final Meeting of Interim
Room 102, State Capitol
August 17, 2000

COMMITTEE MEMBERS PRESENT

Sen. Mignon Waterman, Presiding Officer
Rep. Loren L. Soft, Vice Presiding Officer
Sen. Dale E. Berry
Sen. Eve Franklin
Rep. Bob Lawson
Rep. Trudi Schmidt
Rep. Carolyn Squires

COMMITTEE MEMBERS EXCUSED

Sen. Bob Keenan

STAFF PRESENT

Susan Byorth Fox, Research Analyst
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)

COMMITTEE ACTION

- Approved the minutes from the June 21, 2000, meeting
- Approved that the Committee recommend that the Department continue to meet with interested parties to resolve the issues surrounding developmental disability placements; that it work to

establish a seamless system, meaning that it provide an appropriate level of service at the appropriate time in a client's continuum of care, and that it revise or eliminate commitment laws to present to the 2000 Legislature

- Approved that the Committee write a letter to the Board of Regent urging them to pursue the establishment of a dental hygiene program at an institution of higher education in Montana
- Approved that the Committee write a letter to the Governor, the Board of Regents, and the Commissioner of Higher Education endorsing the current Commissioner of Higher Education's budget proposal that includes expansion of the WICHE and the University of Minnesota dental student slots. Motion carried unanimously.
- Approved that the Committee write a letter to the Department of Public Health and Human Services urging it to seek tobacco use prevention funds for dental health education and screening in Montana's elementary schools because it was an appropriate use for those fund
- Approved that the Committee write a letter to the Governor in support of the original Medicaid dental budget request to increase reimbursement rates for Medicaid dental services
- Approved a Committee bill that would allow access by the DPHHS and community non-profit organizations to cars from the state motor pool when they become surplus to be used by recipients who are leaving the FAIM program

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Sen. Waterman, Chair, at 8:05 a.m. Roll call was noted, Sen. Keenan was excused. (ATTACHMENT #2)

Rep. Schmidt **moved** that the minutes from the June 21, 2000, meeting be approved. Motion carried unanimously. Motion carried unanimously.

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS)

PRESENTATIONS

FAIM Phase II Report

Hank Hudson, Administrator, Human and Community Services Division, DPHHS, provided an overview of FAIM Phase II, the Department's sanctions policy, and the Department's actions to assist eligible FAIM participants in gaining SSI assistance. (EXHIBITS #1, #2, and #3 respectively) Mr. Hudson said that the Division will not be requesting an endorsement from the Committee on the FAIM Phase II proposals because it is still a work in progress.

Mr. Hudson said that the Division has also been working closely with the MT Association of Counties (MACo) to design a proposal that would eliminate the distinction between assumed and nonassumed counties and has reached an agreement with a MACo Subcommittee. The proposal was taken to the full MACo Human Services Committee who also endorsed the agreement. The Department is currently drafting legislation which reflects the compromise reached. Mr. Hudson said that part of the agreement

addresses how authority and decisionmaking will be handled between the counties and the state in the management of local offices of public assistance. It recognizes the fact that local office of public assistance are state offices with state employees, that local governments have an important role to play and the prerogative and right to know what is going on, and that local governments need to participate in decisions that affect their communities. The agreement also retains the involvement of county commissioners in the hiring process and in the development of specific local plans. He added that legislation is being proposed by the Department of Revenue that would replace all state special revenue funds coming from nonassumed counties with general fund which would eliminate the use of property taxes to fund public assistance and eliminate the distinction between assumed and nonassumed counties. If the legislation does not pass, DPHHS has backup legislation that freezes each county at the average of their last 5-year's payments towards public assistance. Counties will be held at that level for a 5-year period before the amount is recalculated. The Department is also changing the look of public assistance within the county public assistance offices.

In conclusion, Mr. Hudson said that most of the FAIM block grant has been used and the Department's level of effort is not sustainable beyond federal fiscal year 2003. Adjustments will have to be made to the programs because the Department will have eliminated any reserve TANF funds and it would be down to the annual block grant with no holdover or reserve funds.

Rep. Soft asked about the general fund impact to eliminate the distinction between assumed and nonassumed counties. Mr. Hudson that the Department's preferred alternative would be cost neutral because it is part of a larger readjustment of county and state responsibilities. Currently, the EPP process does not reflect any cost in eliminating the distinction between assumed and nonassumed counties. However, if the Department's has to go with the 5-year average, the general fund impact would be in excess of \$1 million but less than \$2 million.

Rep. Squires asked how much money was in the annual block grant. Mr. Hudson said that the annual block grant is \$45 million a year and the state's maintenance of effort is approximately \$15 million. The Department is working on a sustainability plan but it is currently several million dollars short of sustainable. The federal law will be reauthorized in this biennium but he did not expect it to increase because states have had surpluses. The child care federal legislation will be reauthorized and may be increased which may allow the Department to not transfer as much TANF funds. Rep. Squires said that her concern is that the group of people who are going to be left on the FAIM Phase II roles are the people who have barriers and they need to be addressed. She said that state not only has the

responsibility to eliminate people from the welfare system but it also has the responsibility to raise people out of poverty.

Sen. Waterman asked the following:

- Was the Department anticipating additional FTE to implement FAIM Phase II?
- Was the Department proposing to eliminate the asset test for Medicaid benefits and the face-to-face application?
- What happens to a participant who does not have gaps in child support payments but who has never received any child support payments? and
- Must participants be employed 15 hours per week in order for postsecondary education to be included as a work activity.

Mr. Hudson responded:

- The Department is currently adjusting staff and some staff may be added by creating modified positions. No FTE have been requested in the EPP proposal and they will not require additional money because the FTE are funded out of currently available funds. Some intensive case management positions will also be added for participants approaching the 60 months and the number of eligibility employees will be expanded because of the Department's commitment to outreach.
- Eliminating the asset test continues to be part of the Department's evolving EPP proposal and the face-to-face application is currently being phased out.
- The Department does not have a proposal for a participant who has never received child support payments, only those who have gaps in child support.
- Additional screening activities at the community level will be needed so that participants can demonstrate that they have an aptitude and plan for a postsecondary education.

Sen. Waterman urged the Department to put the responsibility on the client to fill out the application, apply, and get into college. She felt the process alone would screen people out and show that a marketable skill exists after the program is completed. She also felt that there should be a GPA requirement.

Rep. Schmidt asked if there was a program in place to work with people who are going to be on public assistance forever. Mr. Hudson said that the Department contracts for a great deal of its employment training and services. It has also added requirements into the contracts that the Department provide direct SSI assistance to make sure that if participants are truly unemployable that they are given every opportunity to demonstrate that they meet the disability requirements. In addition, the Department has statewide programs in conjunction with vocational rehabilitation and disability services and sheltered workshops.

Rep. Squires requested that the Department articulate that a \$6.50 per hour job is not going to solve the problem. She said that the concept behind the FAIM Phase II proposal is to take the job whether it means self-sufficiency or not. All of the available programs help and with intensive case management, the barriers can be addressed and participants can earn a livable wage. She urged the Department to not sever people from benefits until they have been given every opportunity to become self-sufficient.

Developmental Disabilities Future Study

Rep. Bob Lawson, House District 80, summarized the Suggested Work Plan and Ground Rules for the Developmental Disabilities Future Study. (EXHIBIT #4)

Joe Mathews, Administrator, Disability Services Division, DPHHS, provided an overview of the final report of the Eastmont Human Services and Montana Developmental Center Future Study as requested by House Bill No. 2 passed in the 1999 Session. (EXHIBIT #5)

Bernadette Franks-Ongoy, Executive Director, Montana Advocacy Program (MAP), said that MAP does not consent to the contents of the final report because MAP's interest in protecting the civil rights of people with disabilities is not included. She said that MAP participated in the future study in very good faith and engaged in the process because it was hopeful that a mechanism would be addressed that would protect the civil rights of people with disabilities and that the process would provide the framework for negotiations to settle MAP's pending lawsuit. MAP was also hopeful that benchmarks were going to be developed with specific outcomes and objectives. Although the final report lacks benchmarks, she believed that the work of the Developmental Disabilities Future Study Committee increased understanding among the parties and, even though there were competing interests, there was an honest effort to understand each interest. Information was shared that would not have been shared otherwise.

Ms. Franks-Ongoy said that during the future study process, MAP did not pursue its lawsuit. She felt that it is better for the citizens of Montana and the people with disabilities that the stakeholders put their heads together and construct a solution instead of allowing a court to make it. However, MAP's ethical obligations to its clients requires that MAP move forward with its pending lawsuit. She said that she is still willing to work to increase understanding toward protecting the civil rights of people with disabilities. Ms. Franks-Ongoy added that the lawsuit was never about shutting down Eastmont Human Services or the Montana Developmental Center (MDC). The lawsuit is about people like Leo Baker who was committed to MDC because he needed a particular service and continues to live at MDC because of the lack of appropriate community services two months after he was found to no longer be seriously developmentally disabled, and it is also about people like Tammy Miner who lives in the community but

continually worries about being institutionalized because of the lack of appropriate community services. In conclusion, she said that she will no longer apologize for the mission of the MAP and if she could ask anything of the Committee, it would be for the direction that all stakeholders sit down and settle the impending lawsuit.

Jean Denning, Director, Big Sandy Activities, said that Big Sandy Activities serves 21 people with developmental disabilities and she has 35 employees. The starting wage for her employees is \$5.75 per hour which includes the two direct-care salary enhancements. She said that she has served on the Developmental Disabilities Future Study Committee to advocate for the rights of the people with disabilities to choose where they want to live. Community providers are in a serious crisis with staffing compensation level and the recruitment and retention of qualified staff. According to a recent study, Big Sandy Activities' staff makes on an average of 38% less than those employees in an institution. She said if more demands are going to be made on the community system, staffing and funding must be addressed.

Vince Benjamin, Superintendent, Montana Developmental Center, stressed that the Future Study Committee discussions must continue. He said that the system needed to be "turned on its head" and new approaches, such as those taken in Nebraska, needed to be reviewed to find the proper solutions to Montana's developmental disabilities problems.

Travis Dougherty, Wade Nash, Leo Baker, and Chad Fite, Residents, MDC, said that they wanted sufficient and appropriate community services so that they can leave MDC and return to their communities to be close to family and friends.

Tammy Miner, Community Resident, feared that the community services that she currently receives will no longer be there resulting in her being committed to an institution and that all she wanted was to live free.

Bob Liston, ADAPT Montana, provided written comments. (EXHIBIT #6)

Ophelia Schultz, Parent of Resident Living at MDC, said that closing MDC or MHSC is not the answer to the problem until funds are appropriated to build community facilities for people like her son who has been at MDC for forty years and considers it his home.

Rep. Soft asked what Mr. Benjamin meant by the system needed to be "turned on its head". Mr. Benjamin said that the institution has always been separate from the system and the system has always

been dysfunctional. He said that Montana needed a seamless system whereby people with disabilities can be placed in the least restrictive community environment but can move back and forth to an institutional setting as a part of the continuum of treatment. He said that the system needs the ebb and flow and people need to move back and forth freely based upon the individual's need at the time. He added that an outreach team was also needed to be placed in the institutions.

Rep. Schultz asked for an example of how the system was not seamless. Mr. Benjamin said that he believed that Montana should repeal its commitment laws because they tie the hands of the system. People are being committed to the institutions for no other reason than unavailable community facilities and services. When this happens, the person ends up in the institution and remains there when there is no need for them to be there, resulting in the person having to be continually recommitted. He added that the system and the institutional settings need to be voluntary. He said that Nebraska, for example, has a voluntary system and residents move back and forth through the system. It has no commitment laws; every resident has a legal guardian; its institutions have their own community programs; and its community-based staff is paid on an equal level to institutional staff (When institutional staff receive a pay raise, an equal amount is put into the community programs to make sure that community staff salaries are equal.) He added that he felt that the MAP lawsuit could also be settled but all of the stakeholders must be committed to settling it.

Rep. Squires commented that another part of the problem has been that the money has never followed the client through the system resulting in a huge discrepancy in funding between the institution and the community providers and workers. She also liked the idea of raising community staff salaries because of the increase in injuries when there is the constant turnover in staff.

Sen. Waterman requested a separate breakdown of the cost per client for MDC and EHSC and the community-level costs per client that included all of the costs for running those facilities. Sen. Waterman asked how many people were on the waiting list for services. Mr. Mathews said that between 400 to 500 remain on the waiting list and it is increasing partly because the developmental disabilities program has established community support that provide more individualized services for those in institutions and partly because some of the people currently living in the community are still receiving little or no services and feel that they have to be institutionalized to receive services.

Sen. Franklin said that the majority of federal Title XX funds has been used for developmental disability services. She asked for an update, where were the people going who have moved out of the institutions, and have community services expanded as a result. Mr. Mathews said that Montana uses its social

services block grant (Title XX) to fund services for people with developmental disabilities. Over the years, the block grant has been severely reduced which has been a great concern for the Department. To date, Congress has yet to decide the fate of the block grant so it will, for now, remain status quo. He added that Montana's developmental disabilities system has been slot and contract driven. When a person leaves an opening in Plentywood, for example, and another person is screened into that opening, then Plentywood is the only place the person can go. The Department is trying to establish a system whereby if a person is not satisfied with that provider, they can go elsewhere or at least have a choice of where they want to live.

Sen. Waterman commented that the underlying theme is that the state cannot move people from the institutions into a community setting because there is an underfunded and inadequate community-based system. She said that all stakeholders must work diligently to resolve the issue because the underlying reasons could not be defended in court and the Legislature cannot resolve them.

Sen. Waterman asked for an update on the dual diagnosis issue. Mr. Mathews said that the Department is seeing more people with dual diagnosis entering the system and the mental health system and the developmental disabilities system are not equipped to deal with both problems. Neither system has submitted EPP proposals because of the competing interests within each program. However, both he and **Dan Anderson, Addictive and Mental Disorders Division, DPHHS**, are coordinating their activities to design a solution for dual diagnosis. However, the coordination has evolved around individual cases as they arise. Mr. Anderson added that another difficulty with dual diagnosis is that there are not enough psychiatrists in the mental health centers to handle the problem. Sen. Waterman commented that work on this problem needed to be on a regular basis rather than a case-by-case basis.

Mental Health

Bonnie Adee, Mental Health Managed Care Ombudsman, stated the following concerns in the mental health arena:

- continuing gaps in the system in terms of the ability to meet needs and providing services, particularly for those who are dually diagnosed;
- inappropriate treatment;
- changes in the system for financial reasons may create or widen gaps in the continuum of care;
- changing or eliminating partial hospitalization coverage must be replaced with something that can address the non-residential regional need for mental health services, particularly for children;
- the inability to support and provide assessments;
- for those not covered by Medicaid in the mental health services plan, transportation is not a covered service resulting in the inability to get to medically necessary services; and

- there needs to be a balance between a person's right to refuse treatment and the perceived need and the family's desire to seek treatment for them.

Dan Anderson, DPHHS, stated the following:

- The new building at the Montana State Hospital (MSH) is complete.
- The number of admissions to MSH has increased to 190 while the average admission in the last fiscal year was 158.
- The deficit in the mental health budget will be addressed in the following ways:
 - the use of \$3.7 million of federal CHIP funds to replace what would have been general fund expenditures;
 - select a new utilization management contract;
 - possibility of decreasing the rate paid for partial hospitalization and reducing the number of partial hospital programs by requiring that partial hospitalization be located at the hospital site;
 - put a membership cap on the mental health services plan at the level that it is currently;
- There will be a \$10 million general fund deficit for the biennium.
- The main portion of the deficit lies in the Medicaid program for mental health services.

Rep. Squires asked if the increase in admissions to MSH was due to the inability of the regional mental health centers to provide adequate care because of the lack of funding. Mr. Anderson said that regional mental health centers have been unable to hire psychiatrists because of the rate the state pays. Rep. Squires asked how the Department can legitimize moving \$3.7 million of CHIP money into the general fund to decrease the deficit. Mr. Anderson said that the CHIP funds would be used to pay for mental health services received by CHIP recipients only. Rep. Squires said that the state was slow implementing the CHIP program and she questioned whether using the savings by not implementing CHIP in time to supplant children with severe mental illnesses was inappropriate use of the money.

Sen. Waterman asked if she understood that the state may have to return some of the CHIP funds to the federal government. **Nancy Ellery, Health Policy and Services Division, DPHHS**, said that the state was looking at returning an estimated \$5.7 million of unspent funds in the first federal fiscal year of the CHIP block grant. In order to use some of the funds for the CHIP-Plus plan, the Department needed the okay from HCFA and the services would have had to be provided by September 30, 2000. If the Department can enhance mental health services for children who are eligible for both programs by September 30, some of the excess CHIP funds can be used.

Sen. Franklin asked if the Department was counting on using excess CHIP funds in the next biennium for children's mental health services. Mr. Anderson said that his desire is to have sufficient funds to at least maintain the mental health services program at its current level and he believed that it may be necessary to use CHIP funds on an ongoing basis in order to accomplish it. **Laurie Ekanger, Director, DPHHS**,

said that the Department has proposed using CHIP funds for the year 2000 and it will most likely be proposed for the next biennium although the Department has yet to make the proposal. The Department is in the process of finding out if the CHIP funds can be used legally and it is still verifying the costs for the mental health program.

Sen. Waterman asked how many children would not be served under the general umbrella of CHIP if the Department continues the "carve out" program of serving seriously mentally ill children with CHIP funds. **Mary Dalton, CHIP**, said that the Department will not have to reduce the number of children who will be served by CHIP in this biennium because the Department will be using funds that it would not have been able to expend over the biennium. Into the next biennium, the number of children served will depend on the level of CHIP funding. She hoped that the Department would propose to increase the eligibility level for CHIP. Sen. Waterman asked for a response to the concerns raised about the reduction in the number of facilities providing partial hospitalization and what it does to access. Mr. Anderson the Department currently pays \$200 a day for partial hospitalization and there are other day-treatment programs which cost \$60 a day. The Department is proposing to create a higher level of day-treatment programs that will meet the needs of children who are currently in partial hospitalization in the satellite programs.

Lois Steinbeck, Senior Fiscal Analyst, Legislative Fiscal Division, said that at the March HJR 35 Subcommittee meeting, she stated that CHIP funds could potentially be used to offset the general fund costs of mental health. With regard to dual eligibility, the CHIP costs for mental health services are not being charged to CHIP currently and there is no idea of how much of the general fund spending in fiscal year 2000 should have been charged to the CHIP premium. This will not affect the level of children that could be covered under CHIP. The second issue is that the CHIP eligibility may not be raised to 200% of poverty because the Department may have to revert \$5.7 million of federal CHIP funds that was going to be used to finance the expansion to 200% of poverty. Ms. Steinbeck said that she has asked the Department for information on how many children would not be able to receive additional CHIP coverage if CHIP funds were used for mental health services. There are 960 children eligible for mental health services. Depending on the Department's report, either 190 to 300 of those children are also enrolled in CHIP. Because the income guidelines are the same for MHSP and CHIP, you would expect that virtually all the children and their siblings who were enrolled in MHSP should also be enrolled in CHIP.

HJR 35 Subcommittee Update

Sen. Franklin provided an overview of the issues and options for consideration by the HJR 35 Subcommittee and provided a copy of statutorily defined elements of a mental health system. (EXHIBITS #7 and #8 respectively)

Mental Health Oversight Advisory Council

Sen. Waterman provided a summary status of the Mental Health Oversight Advisory Council recommendations and a copy of the relationship of the MHOAC recommendations to DPHHS' 2002-2003 budget submission. (EXHIBITS # 9 and #10 respectively) She also provided DPHHS' responses to the MHOAC recommendations. (EXHIBIT #11)

Sen. Waterman asked what triggers the placement of an individual at the Montana State Hospital rather than another setting and how many youth are in out-of-home placements. Mr. Anderson said that admissions to the Montana State Hospital are reviewed through a utilization review process and a determination is made as to whether the placement is appropriate or whether there should have been an alternative placement. If the placement was not appropriate, the Department refers back to the community practitioner who referred the person to the Montana State Hospital. Regarding out-of-home placements, the Department receives monthly report of every child who is placed out of the home. However, the Department, with its own staff, does not monitor these children but the utilization review contractor does.

Foster Care Review and Citizen Review Board - Proposed Legislation

Chuck Hunter, Child and Family Services Division, DPHHS, provided an overview of LC0055 which revises the local citizen review board pilot program act and requires each judicial district to establish a local citizen review board. (EXHIBIT #12)

John W. Larson, District Court Judge, Judicial District #4, Missoula, provided a series of letters written by him to Rep. Trudi Schmidt expressing his concerns about LC0055. (EXHIBIT # 13) He said that he only supported the drafting of LC0055 and does not agree with all of its contents, particularly the sections regarding open deliberations and the proposed citizen review board's (CRB) scope of review. He said that Judges throughout the state, even in the newly established citizen review boards in Great Falls, are closing deliberations not only to protect the rights of the children and parents but to also encourage their review board volunteers to thoroughly talk about the cases and come back to the Judges with recommendations. Judges believe that the foster care review function is judicial and they are very firm that foster care review proceedings should be closed.

Sen. Waterman commented that in the deliberations surrounding LC0055, there were two District Judges who agreed to open the foster care review process and one Supreme Court Judge who was very verbal that he felt that the foster care review deliberations had to be open because of the Montana Constitution.

Susan Fox, Research Analyst, Legislative Services Division, provided a legal memorandum the Application of Federal Substance Abuse Confidentiality Laws to Proposed Citizen Review Board Legislation prepared by Valencia Lane, Staff Attorney, Legislative Services Division. (EXHIBIT #14)

2000-1 Supplemental, 2002-3 Biennium Budget Issues and EPP Status Report, and Bill Draft Descriptions

Director Ekanger provided an overview of the Department's EPP-general-fund-only proposals for fiscal year 2002 and 2003 and an overview of the Department's proposed legislation for the 2001 session. (EXHIBITS #15 and #16 respectively)

Rep. Soft asked if the budget reflected any of the recommendations from the Mental Health Oversight Advisory Committee. Director Ekanger said that the Department does not know the cost of mental health so it is very difficult to get a handle on the budget associated with it. However, the Department currently has many more mental health tools than what it had before the managed care contract. She said that before the contract, the institutions at Lewistown and Warm Springs and community mental health were separate budgets, Medicaid was in a different department, and there was not the ability to move the money around and redirect it. Currently, the Department has the ability to pool the money into a single account; and if, for example, there are savings at the Montana State Hospital, it can be transferred directly into the community.

Tobacco Report

Sen. Berry said that the Governor's Advisory Council for Tobacco Use Prevention will probably request a budget increase for the 2002-2003 biennium. He said that the Center for Disease Control (CDC) has best practices for comprehensive tobacco prevention that show convincing successes where tobacco funds were spent. The CDC recommends that Montana spend \$9.3 million. The Advisory Council will propose to take the annual expenditure of \$5.8 million and phase in the CDC's \$9.3 million recommendation over a 4-year period. Sen. Berry summarized the following Advisory Council's proposed legislation:

- establish a minimum cigarette pack size of 20 cigarettes to eliminate the free small packs that "bait" children;
- support the Montana Clean Indoor Act to prohibit smoking in state buildings;
- strengthen local youth access laws and require cigarettes to be sold from behind the counter;
- give local governments the ability to make stringent laws to reduce access to cigarettes; and

- increase the cigarette tax.

HOUSE BILL NO. 2 REQUIREMENTS AND REPORTS

Governor's Council on Children and Families

Nan LeFebvre, Customer Relations Coordinator, DPHHS, provided an overview of the accomplishments and current projects of the Governor's Council on Families. (EXHIBIT #17)

FAIM Monthly Reports

Mr. Hudson provided a overview of the Human and Community Services Division's HB 2 requirements regarding FAIM recipients who may qualify for SSI or SSDI. (EXHIBIT #18)

Sen. Waterman asked if the assistance program to determine SSI or SSDI eligibility paid for physical and mental examinations and, if not, could maintenance of effort (MOE) funds be used. Mr. Hudson said that the Division is not paying for medical examinations because it is not an allowable expense under FAIM and there are provisions for using MOE funds that must be used. Sen. Waterman felt that in order to be successful, mental and physical examinations must be provided in addition to those given by Social Security.

Abstinence Educational Grant

Susan Nybo, Women's Health and John Berg, Abstinence Only Program, DPHHS, provided overviews of the Abstinence Education Report and the grant received by the Department of abstinence education. (EXHIBITS #19 and #20 respectively) Ms. Nybo also provided information on the most recent teen pregnancy figures. (EXHIBIT #21)

Sen. Waterman asked how the people were selected for the sexual abstinence campaign survey. Mr. Berg said that the phone survey was a random sample of the areas surveyed and the Department had to receive approval from one of the parents before the children could answer the questions. Sen. Waterman said that the survey is not a representative sample of Montana households because the majority (over 50%) of the households in Montana are not 2-parent families.

Interagency Coordinating Council

Ms. LeFebvre summarized the the report from the Interagency Coordinating Council (ICC) for State Prevention Programs. (EXHIBIT #22)

Sen. Waterman said that in 1999, the Legislature enacted language requiring the ICC to review and comment on any prevention funds that were in the budget before the funds could be spent. She asked if there were any changes or denials by the ICC because of the language. Ms. LeFebvre said that there has been no denials and no significant funding changes but rather progress made in the exchange of dialog and the sharing of information among the agencies to avoid duplication of efforts. Sen. Waterman asked if there were measurable benchmarks to show that the ICC's efforts have reduced child abuse and neglect, for example. Ms. LeFebvre said that data is available and she will send the Committee the information.

BRIEF OVERVIEWS

CHIP Update

Mary Dalton, CHIP, DPHHS, provided an update on the Department's statewide advertising and public relations campaign to increase enrollment in Medicaid and CHIP. (EXHIBIT #23)

Sen. Waterman asked if Healthy Mothers Healthy Babies (HMHB) could help contact the families who are currently on the mental health plan to assist them in filling out the CHIP application. Ms. Dalton said that the Department has debated conducting outreach with local outreach coordinators but it decided to wait and see what type of response would be received from the letter it sent. She said that the responses indicated issues of confidentiality and releasing names within a community to a neighbor about whether a person has a child with a mental health condition. Sen. Waterman asked if case managers were notified of their clients who were affected. Ms. Dalton said yes.

Covering Kids

Dick Paulsen, Healthy Mothers Healthy Babies (HMHB), provided a progress report on the HMHB's local pilot projects and outreach activities and its state level outreach and public education on Covering Kids. (EXHIBITS #24 and #25) Committee members suggested that as further outreach, HMHB should set up a tables at every K-Mart, ShopCo, WalMart, and Target and all colleges.

Area 7 - Agency on Aging Update

Mike Hanshaw, Senior and Long Term Care Division, DPHHS, provided a copy of The State of Aging In Montana: 2000 Annual Update. (EXHIBIT#26) He said that before June 30, 2000, the Department entered into a direct contract with each of the seven tribes and paid them for the Older American's Act services that were delivered from December 1999 to June 2000 (\$138,000). The Department also met with representatives of each tribe to discuss tribal sovereignty because the Department has never contracted directly with the tribe but with the Area 7 private not-for-profit

corporation. When the Department contracts directly with the tribes, the Attorney General requires certain language regarding the waiver of tribal sovereignty in relation to the provisions of the contract. The Department also recovered \$106,000 additional funds from Area 7 and it will be disbursed to the tribes and will be part of the next round of discussions. There are three options for the longer term: (1) reconstitute another private not-for-profit corporation and contract an arrangement much like the Area 7 contract; (2) create a governing body within the MT-WY Tribal Leaders Council who would provide administrative functions that are normally done by an Area Agency on Aging and the money would pass directly from the state to the tribes; and (3) acquire a federal waiver so that the money flows directly from the federal government to the tribes.

REPORT FROM THE MONTANA DENTAL ACCESS COALITION

Joanne Dotson, Family and Community Health Bureau, DPHHS, provided an overview of the Montana Dental Action Plan and summarized the outcomes of the Montana Dental Access Coalition. (EXHIBITS #27 and #28 respectively)

Rep. Lawson asked if the Great Falls College of Technology was proposing to establish a registered dental hygienists program. **Mary McCue, Montana Dental Association**, said that the Great Falls College of Technology is committed to having a program established but the Board of Regents excluded from its budget request any funds targeted for a dental hygiene program. Start-up costs are estimated to be between \$300,000 and \$500,000. She said that the Association is in the process of raising \$250,000 of which \$190,000 has been raised. The capitalization of the program will be supported by the Association but it is the ongoing operating expenses of the program (\$100,000 a year) that is in question. She requested the Committee's assistance in acquiring the Board of Regent's support for the dental hygiene program.

PUBLIC COMMENT

Wendy Young, Working for Equality and Economic Liberation (WEEL), said that FAIM Phase II report includes some very good suggestions. However, it also includes suggestions that were never recommended by a focus group and excluded good suggestions that were made by the focus groups. She said that WORD, WEEL, and the MPA formed the Montana Income Support Collaborative (MISC) to

establish its own recommendations and budget for FAIM Phase II that includes solutions presented to the Department during the focus groups that were not implemented in the FAIM Phase II report, such as fill-the-gap child support.

John Meyers, Montana People's Action (MPA), said that since it has become public policy to eliminate and discourage cash assistance as part of public assistance, it has also become common to discourage people who need help from applying and receiving any form of assistance from the state. People who are eligible for insurance programs, such as Medicaid and CHIP, food stamps, and child care assistance have often been uninformed that they were still able to receive this help. He made the following suggestions:

- make sure the people who are in need of help know that assistance is available;
- that the state has a moral obligation to spend the tobacco settlement money on health care needs because it received it in compensation to serious health care problems created by tobacco;
- that the state should make more of its children and adults eligible for health insurance through programs like CHIP and Medicaid;
- shorten the application forms;
- remove the asset test;
- increase the hours worked in the offices of public assistance and establish a public assistance facilitator;
- establish a more diversified outreach program for Medicaid and CHIP; and
- funding the outreach could be accomplished through the release of available CHIP and Medicaid money and remove the maximum grant allotment of \$15,000.

Judy Smith, Women's Opportunity and Resource Development (WORD), said the education and training focus group recommended the following:

- create an up-front assessment for participants without time clock or work participation requirements, preferably six months rather than the recommended one to three months;
- concerted efforts must be made regarding long-term economic development and there must be a commitment in the FAIM Phase II budget for this work;
- a group from the Office of Commissioner of Higher Education will ask the Legislature for an investment in training dollars for hire wage employment;
- poverty must be looked at in two ways: (1) some people have personal barriers and will be in the system longer and (2) because they do not have adequate resources; and
- while FAIM Phase II is a social service model, Ms. Smith encouraged the Committee to review an economic resource model as well, such as the Comprehensive Employment and Training Administration for creating jobs.

Kate Cholewa, MISC, provided written comments. (EXHIBIT #27)

Brianna Kirseen, MT People's Action, recommended that the Committee support the following:

- to eliminate the face-to-face interview for CHIP and Medicaid;
- to remove the asset test for Medicaid;
- to insure as many children as possible;
- to simplify the application process; and
- to establish a comprehensive and effective outreach program for Medicaid and CHIP.

Don Altzager, MT Federation of State Employees, said that union jobs were never considered in the report by the Developmental Disabilities Futures Study. The primary purpose of the unions presents at the working group meetings is the future of the individuals that they serve and that services be provided at the levels that they are needed in the community. Mr. Altzager said that he has worked in the developmentally disabled services arena for 22 years of which 12 were in the community. When he left the community-based services, he was making \$5.50 per hour and he could not make a living. He said that the state needs to provide livable wages and training for people who are providing community-based services.

EXECUTIVE SESSION: CONSIDERATION OF PROPOSALS

Citizen Review Board Legislation (LC0055)

Ann Gilkey, Court Assessment Program, said that the purpose of LC0055 is to make citizen review boards permanent programs statewide rather than its current pilot program status, it clarifies the scope of the CRBs, it clarifies that the safety of children is paramount in line with the Adoption and Safe Families Act, and it provides for open deliberations to all present at the review with the exception that the presiding board member may close all or part of a deliberation under certain circumstances. LC0055 is based on Oregon's model.

Sen. Waterman requested information on other states that had open or closed CRB deliberations.

Rep. Lawson asked how LC0055 would make the goal of permanent and appropriate care for children better than the existing system and how are natural parent rights protected under the proposal. Ms. Gilkey said the CRBs are more thorough and parents like CRBs better than foster care review because they are more likely to be heard. However, she is unsure whether the proposal changes their rights.

Sen. Waterman asked how LC0055's scope of review varies from the national CRB recommended language. Mr. Hunter said the language of LC0055 is intended to focus the review on what needs to happen and what services are necessary to achieve permanency for a child.

Judge John Larson requested that the Committee rely upon federal guidelines for foster care were adopted by the National Association of Foster Care Reviewers and approved by the U.S. Department Health and Human Services Administration for Children and Families and the Administration on Children, Youth, and Families Children's Bureau in 1999. He said that he would rely on the federal language rather than Oregon's model language because the federal language includes practice notes that state: "Foster care review system provides an opportunity for person involved in case to assess the effectiveness of

case planning and service delivery and to strengthen the revised planning if needed by including the child and family in the process, face-to-face reviews, reinforce the use of a team approach to problem solving in case management and actively engage families in case decisionmaking, an essential step for improving child outcomes." He felt that the federal language was a much more flexible definition than the one currently included in the bill and he recommended that the Committee support it.

Sen. Waterman said that legislators receive calls from parents who are saying all of the things that they think happened behind closed doors, they believe that they did not get a "fair shake", and they feel that they were not represented in the deliberations. She felt that having open deliberations would alleviate some of their stress, help them understand why the board reached the conclusion that they did, and that they strengthen the system. Judge Larson said that Montana has had the current system for over 5 years and the foster care review boards have asked Judges to keep the deliberations closed. Secondly, the reviews are informal and families do feel involved because they get to say much more than they would in front of a Judge. Reviewers also say that 99% of the time, everyone knows what is going to happen before the doors are closed and they want the extra measure of confidentiality in order to have frank discussions and make the recommendations to the courts.

Rep. Soft felt that parents needed to be involved in the deliberations. He asked what other reasons do CRBs have for maintaining closed deliberations. Judge Larson said because of various confidentiality rights, the rights of privacy laws, and because of ex parte cases where all involved parties are not present. The Judges believe that the current system works.

Susan Fox, Research Analyst, Legislative Services Division, said that there may be a fiscal impact regarding LC0055 because it requires that each judicial district have a CRB.

Sen. Franklin said that she would like to see a uniform system. She **moved** that the Committee support LC0055 conceptually as a Committee bill to make CRBs the uniform model for foster care review statewide recognizing that the issues on open deliberations and the scope of the CRBs needed to be resolved.

Rep. Lawson felt that the LC0055 should not be recommended as a Committee bill. He preferred that all of the stakeholders work on the problems, come to an agreement, and then an individual legislator could request it if they wanted.

Sen. Franklin withdrew her motion.

Developmental Disabilities Futures Study

Rep. Lawson said that the Committee must keep in mind some of the Futures Study's discussion topics which are as follows:

- the cost of residents in an institutional setting versus the cost of residents in a residential facility;
- that institutional facilities have no control over who comes into the facilities, whether the person be in a developmental disability crisis or a court commitment; and
- that the department needs to establish benchmarks for institutional closures and criteria for maintaining residential facilities and the Legislature needs to make sure that they are followed.

Rep. Lawson added that the Committee should also consider giving the Department some direction on how to handle the Montana Advocacy Program's pending lawsuit and he was certain that the discussions between the Department and all stakeholders must continue in order to come to some consensus and find a solution to the problem.

Rep. Soft said that the Department establishing benchmarks for institutional closures is not going to solve the problem until the following dilemmas can be solved: (1) the philosophical attitude by some people that no person, regardless of their condition, should be in an institutional setting. They should be in community-based residential facilities. (2) The economic attitude by the communities who house the institutions to not close them because of the loss of jobs; and (3) what is best for the client--an institutional setting or a community-based residential facility. He felt this solution must come from the Department in that it must make the system a continuum of care that flows very easily from an institutional setting to a residential facility and he felt that the Legislature needed to discuss the elimination of the commitment laws.

Sen. Waterman said that in her discussions with the people who were part of the study, there were a number of people who felt that the problem was not going to be resolved in either a consensus mode or a political mode where people are fighting to keep a facility open in their communities. They felt the problem could be solved by setting "triggers". For example, if there are only six people residing in an institution, it would "trigger" the institution's closure. Therefore, it would not be the Legislature voting that it will close a certain facility but it forces the Department to make a decision when a certain level is reached.

Ms. Fox reminded the Committee that any "triggering" mechanism that the Department may establish may play more into litigation rather than resolving the issue. With the resolution of the Ohmstead case on the national level, more direction is coming from the federal government. She added that the best case scenario is for the Department to settle the impending MAP lawsuit and the Committee could affect how the lawsuit becomes settled.

Rep. Schmidt **moved** that the Committee recommend that the Department continue to meet with interested parties to resolve the issues surrounding developmental disability placements; that it work to establish a seamless system, meaning that it provide an appropriate level of service at the appropriate time in a client's continuum of care, and that it revise or eliminate commitment laws to present to the 2000 Legislature.

The Committee discussed whether stronger language (i.e. the Department shall) rather than a recommendation but decided to leave the motion a recommendation because the use of stronger language would require legislation or language in House Bill No. 2.

Sen. Waterman said that when the House Appropriations and the Senate Finance and Claims Committees begin to receive the legislation regarding developmental disability placements and when they see that it will cost \$130,000 per client, for example, to keep a facility open, they will have no choice but to discuss closure which is why she requested the language in HB 2. She said that she wanted to avoid having a 6-member subcommittee make decisions based solely on budget.

Sen. Franklin said that if the process is going to be reviewed, the issue that some people need a higher level of care at some point in their lives, but not all of their lives, means that the state may have to reinvent the institution. The state may have to review institutional care so that high levels of care can be provided but the bureaucracy may have to be reinvented. Sen. Waterman said that the Legislature could recommend higher levels of care as a social model versus the medical model, as is done in long-term care in that medical care was provided under the social model but it was a different way of delivering the needed services.

Rep. Lawson added that the Future Studies Committee looked at some of the private providers in Helena because many of their clients come straight out of the MDC and they also went to Missoula because its providers have medically-intensive services. As a result, higher levels of services can be provided outside of an institutional setting.

The Committee reminded the Department that even though the motion was a recommendation to the Department, it was not optional.

Rep. Schmidt's motion passed unanimously.

REPORT FROM THE MONTANA DENTAL ACCESS COALITION

Ms. Fox provided a copy of the Montana Dental Access Plan and summarized the outcomes of the Montana Dental Access Coalition. (EXHIBITS #28 and #29 respectively)

The Committee took the following actions on the recommendations from the Montana Dental Access Coalition:

- Rep. Lawson **moved** that the Committee write a letter to the Board of Regent urging them to pursue the establishment of a dental hygiene program at an institution of higher education in Montana. Motion carried unanimously.
- Sen. Franklin **moved** that the Committee write a letter to the Governor, the Board of Regents, and the Commissioner of Higher Education endorsing the current Commissioner of Higher Education's budget proposal that includes expansion of the WICHE and the University of Minnesota dental student slots. Motion carried unanimously.
- Rep. Schmidt **moved** that the Committee write a letter to the Department of Public Health and Human Services urging it to seek tobacco use prevention funds for dental health education and screening in Montana's elementary schools because it was an appropriate use for those funds. Motion carried unanimously.
- Sen. Franklin **moved** that the Committee write a letter to the Governor in support of the original Medicaid dental budget request to increase reimbursement rates for Medicaid dental services. Motion carried unanimously.

OTHER RECOMMENDATIONS

Although the Committee discussed the Interagency Coordinating Council's request to increase its membership and funding, no action was taken.

Rep. Schmidt **moved** that a Committee bill be approved that would allow access by the DPHHS and community non-profit organizations to cars from the state motor pool when they become surplus to be used by recipients who are leaving the FAIM program.

Rep. Lawson asked who could purchase the cars. Sen. Waterman said that people who purchase the cars must be FAIM participants, they had to be working, and they had to be licensed to drive and able to insure the car, and they had to have the ability to maintain the car and make the payments. Rep. Lawson questioned why the bill should be limited to FAIM participants since the lack of transportation is a systemwide problem.

Sen. Berry asked why the bill failed. Rep. Soft said that many legislators felt it was a "give away" program and there were many concerns about the maintenance and insurance of the car.

Rep. Schmidt's motion carried on a 6 to 1 vote with Rep. Lawson voting no.

OTHER BUSINESS

DPHHS Rule Review

Ms. Fox said that the day care rules have been changed and David Niss, Staff Attorney, was startled at the magnitude of the changes. Many were repealed, many were new, and many were amended. Although Mr. Niss acknowledged that many of the rules were reorganization and rearrangement, it will be months down the road that people realize the ramification of the rules. Ms. Fox said that to date, the rules have been adopted and there has been no controversy over them.

Ms. Fox added that there has also been a meeting on the third draft of the quality assurance rules. To date, the rules are not in the formal process but the informal process is continuing.

Final Report Outline

Ms. Fox said that many final reports do not get used like they should. They are very good to have for archival purposes and research and it is very important for the Committee to have some report to show what the Committee considered, what actions came out of the Committee, and Committee considerations for the next interim. She suggested that the Committee's final report be a brief summary of what took place at each meeting, that it include important exhibits and ideas, any major Committee concerns, concentrate on a message for continuity to the House Human Services and Senate Public Health Committees, and identify two crucial issues for the next interim Committee to focus on. The Committee agreed. Staff will circulate a draft report to Committee members for their review.

There being no further business, the meeting adjourned at 4:45 p.m.

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